

Scott Gratton
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BROWN LAW FIRM, P.C.
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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

LOREILEI SOANES,

Plaintiff,

VS.

CAROLINA CASUALTY INSURANCE
COMPANY and BIG SKY ADJUSTERS,
INC., A Montana Corporation,

Defendants.

Cause No:

Judge:

**DEFENDANT CAROLINA
CASUALTY INSURANCE
COMPANY'S ANSWER,
AFFIRMATIVE DEFENSES AND
DEMAND FOR JURY TRIAL**

COMES NOW Defendant Carolina Casualty Insurance Company (Carolina Casualty), through its attorney of record, and sets forth the following Answer and Affirmative Defenses to Plaintiff's Complaint:

PLAINTIFF'S COUNT I:

1. With respect to the allegations set forth in Paragraph 1 and upon information and belief, Defendants admit the allegations set forth therein and attached as Exhibit “A”. As such, Plaintiff is a resident of the country of Canada for purposes of residency issues.
2. Defendants admit the allegations set forth in Paragraph 2, and that Carolina Casualty Insurance Company organized and existing under the laws of the State of Iowa with its

1 principle place of business as Jacksonville, Fla.

2 3. Defendants admit the allegations set forth in Paragraph 3 and affirmatively assert that Big
3 Sky Adjusting, Inc., (hereinafter “Big Sky”), named as a Defendant in this action wherein it
4 was acting within the course and scope of its contractual relationship with Lon Dale, attorney
5 in fact for Defendants in the case of *Lorelei Soanes v. Michael L. Heidecker and Hinman*
6 *Trucking*, Cause No. DV 08-1023, Yellowstone County District Court, and that it was
7 appropriate for Big Sky to propound upon and receive a response to the Request for
8 Statement of Damages showing that the parties have diversity of citizenship in this matter
9 and for jurisdictional purposes the amount in controversy exceeds Seventy-Five Thousand
10 Dollars (\$75,000.00). (See Exhibits “B” and “C”, Request for Statement of Damages and
11 Response to the same).

12 4. Defendant Carolina Casualty admits the allegations set forth in Paragraph 4.

13
14 5. With respect to the allegations set forth in Paragraph 5, Defendant Carolina Casualty admits
15 that Michael L. Heidecker (hereinafter “Heidecker”) was operating his truck in the ordinary
16 course and scope of his employment with Rick Hinman Trucking, Inc. (hereinafter
17 “Hinman”) on the date of the accident alleged in the Complaint and through jury trial of
18 *Lorelei Soanes v. Michael L. Heidecker and Hinman Trucking*. Although it was and still is
19 contested, despite the jury verdict that found Hinman and Heidecker negligent, the remaining
20 allegations are denied to the extent that Plaintiff might try to claim that any admission of the
21 finding of negligence by the trial court of that case and ultimately liability on their part, was
22 somehow reasonably clear and that allegation is specifically, and unequivocally, denied.

23 6. Defendant Carolina Casualty specifically denies each and all of the remaining allegations of
24 Paragraphs 6, 7, 8, 9, 10, 11, and 12, and affirmatively assert that liability for the accident
25 was contested by defense counsel for Hinman and Heidecker and that this was done
26 appropriately.

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PLAINTIFF'S COUNT II:

7. Defendant Carolina Casualty, in response to the allegations set forth in Paragraph 13, re-alleges and incorporates by reference the defenses and assertions of fact set forth in the above paragraphs 1 through 6 of the Answer to paragraphs 1 through 12 of the Complaint.

8. With respect to the allegations set forth in Paragraph 14, Defendant Carolina Casualty denies that liability for Plaintiff's injuries was reasonably clear. Defendant affirmatively asserts that liability for Plaintiff's claims against Hinman and Heidecker was contested up through the time that the verdict was rendered and that Carolina Casualty paid the verdict against Hinman and Heidecker in the amount of \$867,000. Defendant Carolina Casualty specifically avers that it had previously advanced paid Plaintiff pursuant to the Montana Voluntary Payment of Claims statute the sum of \$80,078.40 reserving by reference therein all benefits of the statute, including but not limited to the right to contest liability and ensure that the jury was not apprised of the advance payment which met all mandates of *Ridley*. Defendants further assert that that common law cited in Paragraph 14 of Plaintiff's First Amended Complaint (*Ridley v. Guaranty National* and *DuBray v. Farmers Insurance Exchange*) only requires the advance payment of causally related medical expenses and/or causally related, reasonably certain, and by extension in *Dubray* to lost wages, where liability is determined as being reasonably clear. Liability for Ms. Soanes claims in the underlying litigation was not reasonably clear however all advancements were made pursuant to the Montana Voluntary Payment of Claims statute and through an interpleader action appropriately filed by Defense Counsel in the underlying case.

9. With respect to the allegations set forth in Paragraph 15, Defendant Carolina Casualty denies all of the allegations and asserts that its conduct does not meet the requirements under Montana Statutory and/or Common Law that it acted with malice nor that Plaintiff is entitled to recover punitive damages against Carolina Casualty pursuant to Sections 27-1-220 and

221 for any violations under Section 33-18-242(4), MCA. Defendant Carolina Casualty affirmatively asserts that it cannot be held liable for punitive damages as Plaintiff's cannot meet the legal standard required for an award of such damages under Montana law. Defendant Carolina Casualty denies that liability for Plaintiff's resulting injuries was reasonably clear and because liability for Plaintiff's injuries and damages was contested, Defendants had no duty to advance pay Plaintiff's causally related medical expenses, despite doing so, and/or Plaintiff's reasonably certain and causally related lost wages/income. Defendant Carolina Casualty, through the assistance of its counsel, Lon Dale, herein affirmatively asserts that it cannot be held liable for damages under MCA § 33-18-242 because it had a reasonable basis in fact and/or under law to deny liability for the Plaintiff's claimed injuries and damages alleged in the underlying claim, *Lorelei Soanes v Michael L. Heidecker and Rick Hinman Trucking, Inc.*, Cause No. DV 08-1023, Yellowstone County District Court.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted and should be dismissed with prejudice.

SECOND AFFIRMATIVE DEFENSE

Defendant had a reasonable basis in law and/or fact for its actions in this case.

THIRD AFFIRMATIVE DEFENSE

Defendant asserts the defenses set forth in § 33-18-242, MCA.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to satisfy the standard for punitive damages.

FIFTH AFFIRMATIVE DEFENSE

Defendant was not required to second guess the informed opinions of defense counsel in the underlying claim, *Lorelei Soanes v Michael L. Heidecker and Rick Hinman Trucking, Inc.*, Cause No. DV 08-1023, Yellowstone County District Court, and has relied upon the same in

1 its determinations of issues throughout the handling of this matter.

2 **SIXTH AFFIRMATIVE DEFENSE**

3 Liability in the underlying case was contested and was never reasonably clear.

4 **SEVENTH AFFIRMATIVE DEFENSE**

5 Liability in the underlying case was contested and was never reasonably clear with clear and
6 convincing evidence or under the standards provided by the Montana Supreme Court at the
7 time that decisions in the underlying case had to be made.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 Plaintiff's claims are barred by the applicable statute of limitations.
10

11 **NINTH AFFIRMATIVE DEFENSE**

12 Punitive and exemplary damages claimed are violative of the United States Constitution and the
13 Constitution of the State of Montana as being violative of the due process clause, the equal
14 protection clause, Article II, Section 25 of the Montana Constitution and the Fifth Amendment of the
15 United States Constitution relating to double jeopardy and Article II, Section 22 of the Montana
16 Constitution and the Eighth Amendment to the United States Constitution prohibiting the imposition
17 of excessive fines.
18

19 WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Carolina Casualty prays
20 for judgment against Plaintiff, dismissing her Complaint with prejudice and awarding Defendant its costs
21 of suit and such other and further relief as may be deemed proper.
22

23 **DEMAND FOR JURY TRIAL**

24 Defendant Carolina Casualty demands trial by jury in this matter.
25
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1 DATED this 8th day of September, 2010.

2
3 By: /s/Scott G. Gratton
4 Scott G. Gratton
5 BROWN LAW FIRM, P.C.
6 *Attorney for Defendant Carolina Casualty*
7 *Insurance Company*
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CERTIFICATE OF SERVICE

I hereby certify that, on September 8th, 2010, a copy of this Answer was served on the following person(s):

1. U.S District Court, Butte Division
2. Montana Second Judicial District Court, Silver Bow County
Clerk of District Court
155 W. Granite St., Room 313
Butte, MT 59701
3. Alexander (Zander) Blewett, III
Kurt M. Jackson
HOYT & BLEWETT PLLC
P. O. Box 2807
Great Falls, MT 59403-2807

and

- Sara R. Sexe
MARRA, SEXE, EVENSON & BELL, P.C.
P. O. Box 1525
Great Falls, MT 59403-1525
Attorneys for Plaintiff
4. Mark A. Vucurovich, ESQ.
HENNINGSEN, VUCUROVICH
& RICHARDSON, P.C.
116 West Granite, P.O. Box 399
Butte, MT 59701
Attorneys for Defendant Big Sky Adjusters, Inc.

by the following means:

<u>1, 3</u> CM/ECF	_____ Fax
_____ Hand Delivery	_____ E-Mail
<u>2</u> U.S. Mail	_____ Overnight Delivery Services

By: /s/ Scott G. Gratton
Scott G. Gratton
BROWN LAW FIRM, P.C.
*Attorney for Defendant Carolina
Casualty Insurance Company*

COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDBEN
COMMISSIONER



OFFICE OF THE MONTANA
STATE AUDITOR

June 29, 2010

Summons_{KB}
R17279

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Batty Sutherland
Carolina Casualty Insurance Company
4600 Touchton Rd. E., Bldg. 100, Ste 400
Jacksonville, FL 32246

Dear Ms. Sutherland:

Attached is a *Summons* and *Complaint* in the case of:

LORELIE SOANES,

Plaintiff,

v.

CAROLINA CASUALTY INSURANCE
COMPANY and BIG SKY ADJUSTERS,
INC., a Montana Corporation,

Defendant,

originating in the District Court of the Second Judicial District of the State of Montana, in
and for the County of Silver Bow.

Service of Process was made June 25, 2010, upon the Commissioner of Insurance in
conformity with the provisions of the Montana Code. Please contact Darla Sautter at
(406) 444-2726 with any questions.

Sincerely,


JESSE LASLOVICH
Chief Legal Counsel

JAL/djs
Enclosures

cc: Alexander Blewett, III, Esq.
Attorney for Plaintiff



COPY

Alexander (Zander) Blewett, III, Esq.
 HOYT & BLEWETT PLLC
 P.O. Box 2807
 Great Falls, MT 59403-2807
 (406) 761-1960 - Phone
 (406) 761-7186 - Fax

Sara R. Sexe, Esq.
 MARRA, SEXE, EVENSON & BELL, P.C.
 P.O. Box 1525
 Great Falls, MT 59403
 (406) 268-1000 - Phone
 (406) 761-2610

Attorneys for Plaintiff

MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW COUNTY

LORELEI SOANES,

Plaintiff,

-vs-

CAROLINA CASUALTY INSURANCE
 COMPANY and BIG SKY ADJUSTERS,
 INC., A Montana Corporation,

Defendants.

CAUSE NO. DV-10-253

Judge: KURT KRUEGER
 Judge, Dept. 1
 SUMMONS

TO: THE ABOVE-NAMED DEFENDANT, CAROLINA CASUALTY
 INSURANCE COMPANY

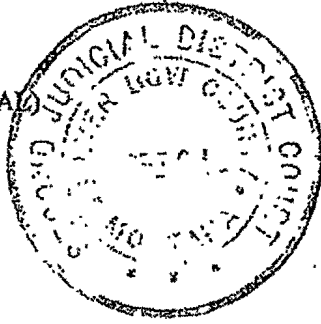
You are hereby summoned to answer Plaintiff's Complaint and Demand for Jury Trial in this action which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your Answer and serve a copy thereof upon the Plaintiff's attorneys, Hoyt & Blewett PLLC, P.O. Box 2807, Great Falls, Montana, 59403-2807, and Marra, Sexe, Evenson & Bell, P.C., P.O. Box 1525, Great Falls, MT 59403, within thirty (30) days after the service of this Summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in Plaintiff's Complaint and Demand for Jury Trial.

//

1
2 WITNESS my hand and the seal of said Court this 22 day of June, 2010.

3 LORI MALONEY, DISTRICT COURT CLERK

4
5 (COURT SEAL)



6 By: Roweill Deputy Clerk
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COPY

Alexander (Zander) Blewett, III, Esq.
 HOYT & BLEWETT PLLC
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 (406)761-1960 - Phone
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 MARRA, SEXE, EVENSON & BELL, P.C.
 P.O. Box 1525
 Great Falls, MT 59403
 (406) 268-1000 - Phone
 (406) 761-2610

Attorneys for Plaintiff

MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW COUNTY

LORELEI SOANES,

Plaintiff,

-vs-

CAROLINA CASUALTY INSURANCE
 COMPANY and BIG SKY ADJUSTERS,
 INC., A Montana Corporation,

Defendants.

CAUSE NO. DV-10-253
 Judge: KURT KRUEGER
 Judge, Dept 1

COMPLAINT AND
 DEMAND FOR JURY TRIAL

COMES NOW the above-named Plaintiff and for her claims against Defendants states
 and alleges as follows:

COUNT I

1. Plaintiff, Lorelei Soanes, is a citizen of Canada, residing in Edmonton Alberta.
2. Defendant, Carolina Casualty Insurance Company (Carolina Casualty) is a foreign insurance company carrying out an insurance business in the state of Montana.
3. Defendant, Big Sky Adjusters Inc., is a Montana corporation engaged in the business of adjusting insurance claims in the state of Montana, with its principal place of business in Butte, Silver Bow County, Montana, and at all times material herein acted as the agent and adjuster for Carolina Casualty regarding the claims of Lorelei Soanes.
4. Defendant, Carolina Casualty, insured Michael L. Heidecker and Rick Hinman

Trucking, Inc., for motor vehicle liability coverage for operations in a number of states, including the state of Montana.

5. On December 5, 2005, Michael L. Heidecker was operating a truck in the ordinary course and scope of his employment with Rick Hinman Trucking, Inc., and negligently caused the truck he was operating to back into Lorelei Soanes, who suffered significant personal injuries.

6. As of the date of the accident, or very soon thereafter, Michael L. Heidecker and Rick Hinman Trucking, Inc.'s liability for the subject accident and Plaintiff's injuries and damages was reasonably clear.

7. Despite such reasonably clear liability, Defendant, Carolina Casualty, and its agent adjuster, Big Sky Adjusters, Inc., denied any and all liability for Plaintiff's bodily injury and damages.

8. Carolina Casualty and Big Sky Adjusters Inc., committed the torts, alleged below, in the county of Silver Bow and Defendant, Big Sky Adjusters, Inc., is a resident of the county of Silver Bow. As a result, venue is proper in the county of Silver Bow.

9. Defendants violated § 33-18-201(6), MCA, by failing and neglecting to attempt in good faith to effectuate a prompt, fair and equitable settlement of Plaintiff's claims once liability had become reasonably clear.

10. Defendants also violated § 33-18-201(4), MCA, by refusing to pay Plaintiff's claims without conducting a reasonable investigation based upon all available information.

11. As a direct and proximate result of Defendants' above-mentioned violations, Plaintiff suffered damages and Defendants are liable for all such damages, pursuant to § 33-18-242, MCA, in an amount to be proven at the time of trial, including her emotional distress, loss of use of money, which should have been paid, and such other relief as the Court deems just under the circumstances.

12. Defendants' conduct and violations of law, as hereinabove alleged, constitute malice under § 27-1-221, MCA, and Plaintiff is, therefore, entitled to recover punitive damages against Defendants, pursuant to §§ 27-1-220 and 221, MCA, and § 33-18-242(4), MCA.

COUNT II

13. Plaintiff restates and realleges each and every fact and allegation stated in ¶ 1 - 12 above.

14. Defendants had a common law duty to deal reasonably with Plaintiff as a claimant and Defendants breached that duty, directly and proximately causing Plaintiff to suffer damages as set forth above, and Defendants are liable for all such damages, pursuant to § 33-18-201, MCA, and/or the common law of the State of Montana, all in an amount to be proven at the time of trial.

15. Defendants' conduct, in violating their common law duties, constitutes malice under § 27-1-221, MCA, and Plaintiff is, therefore, entitled to recover punitive damages against Defendants, pursuant to § 27-1-220 and 221, MCA, and § 33-18-242(4), MCA.

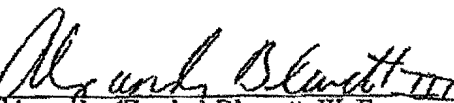
WHEREFORE, Plaintiff prays for judgment against Defendants under Count I for all damages to which she is entitled under Montana law, including emotional distress, loss of use of the money, punitive damages, and her costs and disbursements incurred herein, and any further relief as may be justified under the circumstances.

Pursuant to Count II, Plaintiff prays for judgment against Defendants for all damages to which she is entitled under Montana law, including emotional distress, loss of use of the money, and punitive damages, and her costs and disbursements incurred herein, and any further relief which may be justified under the circumstances.

DATED this 21 day of June, 2010.

Sara R. Sexe, Esq.
MARRA, SEXE, EVENSON & BELL, P.C.
P.O. Box 1525
Great Falls, MT 59403

HOYT & BLEWETT PLLC

By 
Alexander (Zander) Blewett, III, Esq.
P.O. Box 2807
Great Falls, MT 59403-2807

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands that all issues be tried before a jury.

DATED this 21st day of June, 2010.

Sara R. Sexe, Esq.
MARRA, SEXE, EVENSON & BELL, P.C.
P.O. Box 1525
Great Falls, MT 59403

HOYT & BLEWETT PLLC

By: Alexander (Zander) Blewett, III
Alexander (Zander) Blewett, III, Esq.
P.O. Box 2807
Great Falls, MT 59403-2807

Attorneys for Plaintiff

FILED
PARA. ☒
ATTY. ☒ SGC

SCANNED
E-MAILED

Alexander (Zander) Blewett, III, Esq.
HOYT & BLEWETT PLLC
P.O. Box 2807
Great Falls, MT 59403-2807
(406)761-1960 - Phone
(406)761-7186 - Fax

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P.O. Box 1525
Great Falls, MT 59403
(406) 268-1000 - Phone
(406) 761-2610 - Fax

Attorneys for Plaintiff

MONTANA SECOND JUDICIAL DISTRICT COURT, SILVER BOW COUNTY

* * * * *

LORELEI SOANES,

Plaintiff,

-vs-

CAROLINA CASUALTY INSURANCE
COMPANY and BIG SKY ADJUSTERS,
INC., A Montana Corporation,

Defendants.

CAUSE NO. DV-10-253

Judge: Hon. Kurt Krueger
Judge Dept. No. 1

PLAINTIFF'S STATEMENT
OF CLAIM

* * * * *

Plaintiff is making this statement of claim for damages, pursuant to Section 25-4-312,
MCA. The amount to which Plaintiff is entitled will be decided by an impartial jury from which
Plaintiff will request reasonable compensation for all the damages sustained as a result of the
Defendants' conduct. In order to comply with the request for statement of claim made by the
Defendant, Big Sky Adjusters, Inc., Plaintiff believes the jury could reasonably award Plaintiff
the following sums; however, the exact dollar amount will be solely within the discretion of the
jury:

1. Plaintiff believes that a jury could reasonably award damages for loss of use of the
judgment, \$867,000.00, with interest at 10% per annum from April 9, 2008, until Carolina
Casualty paid the judgment.

2. Plaintiff believes that a jury could reasonably award general damages, including

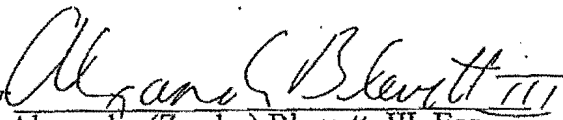
emotional distress recoverable under Montana law in an amount to be determined by the jury, which could exceed \$300,000.

3. Plaintiff believes that a jury could reasonably award punitive damages in an amount to be determined by the jury based upon the egregiousness of the conduct of Defendants and the net worth of the Defendants.

DATED this 26th day of August, 2010.

Sara R. Sexe, Esq.
MARRA, SEXE, EVENSON & BELL, P.C.
P.O. Box 1525
Great Falls, MT 59403

HOYT & BLEWETT PLLC

By 
Alexander (Zander) Blewett, III, Esq.
P.O. Box 2807
Great Falls, MT 59403-2807

Attorneys for Plaintiff

CERTIFICATE OF MAILING

I do hereby certify that on this 26th day of August, 2010, I mailed a true and correct copy of the above and foregoing through the United States Postal Service, postage prepaid, to the following:

Mark A. Vucurovich, Esq.
HENNINGSEN, VUCURVICH & RICHARDSON, P.C.
116 West Granite
P.O. Box 399
Butte, MT 59701
Attorneys for Big Sky Adjusters, Inc.

Scott G. Gratton
BROWN LAW FIRM, P.C.
315 N. 24th Street
P.O. Drawer 849
Billings, MT 59103-0849
Attorneys for Defendant Carolina Casualty



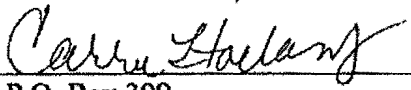
CERTIFICATE OF SERVICE BY MAILING

This is to certify that on the 9th day of August, 2010, the foregoing document was served upon the following counsel of record by depositing a true copy thereof in the United States mails, postpaid, addressed as follows, to-wit:

Alexander (Zander) Blewett, III, Esq.
Hoyt & Blewett PLLC
P.O. Box 2807
Great Falls, MT 59403-2807

Sara R. Sexe, Esq.
Marra, Sexe, Evenson & Bell, P.C.
P.O. Box 1525
Great Falls, MT 59403

HENNINGSEN, VUCUROVICH
& RICHARDSON, P.C.

By: 
P.O. Box 399
Butte, Montana 59702

MARK A. VUCUROVICH, ESQ.
HENNINGSEN, VUCUROVICH
& RICHARDSON, P.C.
116 West Granite, P.O. Box 399
Butte, Montana 59701
(406) 723-3219
Attorney for Defendant,
BIG SKY ADJUSTERS, INC.,
A Montana Corporation

AUG 24 2010

MONTANA SECOND JUDICIAL DISTRICT, SILVER BOW COUNTY

LORELEI SOANES,)	
)	
Plaintiff,)	Cause No: DV-10-253
)	
vs.)	
)	REQUEST FOR STATEMENT OF
CAROLINA CASUALTY INSURANCE)	CLAIM
COMPANY and BIG SKY ADJUSTERS,)	
INC., a Montana Corporation,)	
)	
Defendants.)	

COMES NOW, the Defendant, BIG SKY ADJUSTERS, INC., a Montana Corporation,
and herein requests a statement of all damages being sought against the Defendants in this
matter.

DATED this 24 day of August, 2010.

HENNINGSEN, VUCUROVICH
& RICHARDSON, P.C.

By: [Signature]
Mark A. Vucurovich
P.O. Box 399
Butte, Montana 59701

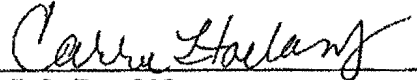
CERTIFICATE OF SERVICE BY MAILING

This is to certify that on the 9th day of August, 2010, the foregoing document was served upon the following counsel of record by depositing a true copy thereof in the United States mails, postpaid, addressed as follows, to-wit:

Alexander (Zander) Blewett, III, Esq.
Hoyt & Blewett PLLC
P.O. Box 2807
Great Falls, MT 59403-2807

Sara R. Sexe, Esq.
Marra, Sexe, Evenson & Bell, P.C.
P.O. Box 1525
Great Falls, MT 59403

HENNINGSEN, VUCUROVICH
& RICHARDSON, P.C.

By: 
P.O. Box 399
Butte, Montana 59702